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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Nikola Corporation, a Delaware
corporation,

Plaintiff,

vs.

Tesla, Inc., a Delaware corporation,

Defendant.

Case No.: 3:18-CV-07460-JD

The Hon. James Donato

**PLAINTIFF NIKOLA
CORPORATION'S MOTION FOR
CLARIFICATION REGARDING THE
OCTOBER 18, 2021 COURT ORDER**

1 On September 29, 2021, the Court issued an order administratively closing the above-
2 captioned case and ordering Plaintiff to show cause regarding why the case should not be dismissed
3 for failure to prosecute. After briefing on the order to show cause, the Court issued an additional order
4 on October 18, 2021 stating that “The case will not be dismissed at this time for failure to prosecute,
5 but that may change if Nikola does not move this case forward to resolution in an efficient and timely
6 manner.” Under the Court’s orders, the case remains administratively closed. However, the
7 technology tutorial is set for January 13, 2022 and the claim construction hearing is set for January 27,
8 2022.

9 As described in greater detail below, Plaintiff has attempted to move the case forward pursuant
10 to the Court’s order. However, the parties have been unable to come to an agreement about the
11 meaning of the Court’s order and Defendant has taken the position that discovery is not appropriate
12 because the case is administratively closed.

13 On November 8, 2021, Plaintiff’s counsel emailed Defendant’s counsel inquiring whether
14 “Tesla is willing to agree to a pre-trial schedule,” proposing that “Nikola and Tesla exchange lists of
15 those depositions they anticipate taking,” requesting to “work together to schedule the depositions,”
16 offering to begin producing documents to Tesla, requesting that Tesla begin producing documents,
17 and indicating that Nikola believes Tesla’s interrogatory responses are incomplete. *See* Decl. of R.
18 Williams (“Williams Decl.”), Ex. A, Email from R. Williams to A. Pivovar and D. Knight, 8 Nov 21.
19 Having received no response, Plaintiff’s counsel again emailed Defendant’s counsel on November 18,
20 2021 seeking to schedule a meet and confer to discuss the issues of Plaintiff’s November 8, 2021
21 email. *See* Decl. of R. Williams (“Williams Decl.”), Ex. A, Email from R. Williams to A. Pivovar and
22 D. Knight, 18 Nov 21.

23 Rather than meet and confer, Defendant’s counsel responded via email indicating Defendant’s
24 position that “discovery is not open in the case” because the case is still administratively closed and
25 the Court was “only moving forward with claim construction.” *See* Williams Decl. Ex. A, Email from
26 D. Knight to R. Williams and A. Pivovar, 19 Nov 21.

1 On December 7, 2021, Plaintiff's counsel again emailed Defendant's counsel reiterating
 2 Nikola's position that discovery should proceed and indicating that Nikola was considering filing this
 3 motion for clarification. *See* Decl. of R. Williams ("Williams Decl."), Ex. A, Email from R. Williams
 4 to A. Pivovar and D. Knight, 7 Dec 21. Having received no response, Plaintiff's counsel requested a
 5 meet and confer to discuss these issues. *See* Williams Decl. Ex. A, Email from D. Knight to R.
 6 Williams and A. Pivovar, 19 Nov 21.

7 On December 9, 2021, Defendant's counsel responded that Tesla had again changed its counsel
 8 of record (for the third time) in this case and requesting that all future communication be addressed to
 9 Aamir Kazi and Dan Gopenko of Fish & Richardson. *See* Williams Decl. Ex. A, Email from A. Pivovar
 10 to R. Williams, 9 Dec 21. Plaintiff's counsel promptly reached out to Defendant's new counsel,
 11 seeking clarification regarding whether Tesla was "going to maintain the position that no discovery
 12 should take place while the case is administratively closed" and whether Tesla would "participate in
 13 discovery absent further clarification from the Court." *See* Williams Decl. Ex. A, Email from R.
 14 Williams to A. Kazi and D. Gopenko, 9 Dec 21; Williams Decl. Ex. A, Email from R. Williams to A.
 15 Kazi and D. Gopenko, 15 Dec 21.

16 On December 15, 2021, Defendant's counsel responded that "Tesla's position is that the case
 17 is administratively closed, and therefore, discovery is not appropriate." *See* Williams Decl. Ex. A,
 18 Email from A. Kazi to R. Williams to and D. Gopenko, 15 Dec 21. The parties met and conferred
 19 telephonically on December 16, 2021, and Tesla's counsel again confirmed Tesla's position that
 20 discovery is not appropriate because the case is administratively closed pending further order. *See*
 21 Williams Decl. Ex. A, Email from R. Williams to A. Kazi and D. Gopenko, 16 Dec 21.

22 "A court may clarify its order for any reason." *Wahl v. Am. Sec. Ins. Co.*, No. C 08-0555 RS,
 23 2010 WL 2867130, at *3 (N.D. Cal. July 20, 2010). "This type of request 'invite[s] interpretation,
 24 which trial courts are often asked to supply, for the guidance of the parties.'" *Id.* (quoting *Bordallo v.*
 25 *Reyes*, 763 F.2d 1098, 1102 (9th Cir. 1985); *see also Padgett v. Loventhal*, No. 5:04-CV-03946-EJD,
 26 2015 WL 13753300, at *1 (N.D. Cal. May 13, 2015) ("[T]he clarification process presumes some
 27 legitimate need supporting relief, such as the existence of ambiguity or confusion that can be corrected

By /s/
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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2021, I electronically transmitted the foregoing document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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